



## Senate

General Assembly

**File No. 87**

January Session, 2003

Substitute Senate Bill No. 908

*Senate, March 31, 2003*

The Committee on Public Health reported through SEN. MURPHY of the 16th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### **AN ACT CONCERNING SECONDHAND SMOKE IN WORK PLACES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-342 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 (a) As used in this section, "smoke" or "smoking" means the lighting  
4 or carrying of a lighted cigarette, cigar, pipe or similar device and  
5 ["smoking area" means a separately designated room which (1) need  
6 not be entered in order to conduct business; (2) is designated as a  
7 smoking area; and (3) when designated as a smoking area does not  
8 deprive employees or the public of an existing nonsmoking lounge or  
9 waiting area. The primary purpose of a smoking area is to provide a  
10 place for persons to smoke, while minimizing smoke in all other areas  
11 of the building. Persons in charge of public or other buildings shall not  
12 be required to make any expenditures or structural changes to create a  
13 smoking area] "smoking room" means a room that is (1) designated as  
14 a room in which individuals may smoke, (2) completely separated

15 from the nonsmoking portion of a building by floor to ceiling walls  
16 and a door, (3) ventilated in such a way as to prevent smoke from  
17 entering a nonsmoking area, and (4) not used to serve or distribute  
18 food or beverages.

19 (b) [No] Notwithstanding the provisions of section 31-40q, as  
20 amended by this act, no person shall smoke: (1) In any building or  
21 portion of a building owned or leased and operated by the state or any  
22 political subdivision thereof except in a smoking [area] room; (2) in  
23 any area of a health care institution, [other than a smoking area,  
24 provided the smoking area may not be the institution's only waiting  
25 area,] and notice shall be posted at entrances to such institutions that  
26 smoking is prohibited by state law except in a smoking room; (3) in  
27 any area of a retail food store; [open to the general public;] (4) in any  
28 [public area of a restaurant having a seating capacity of seventy-five or  
29 more persons, unless a sign is posted which indicates that smoking is  
30 permitted in such area, provided (i) no such restaurant shall be  
31 designated, in its entirety, as a smoking area, (ii) smoking may be  
32 prohibited in rooms used for private social functions, and (iii) a sign is  
33 posted at the entrance of the restaurant indicating the availability of  
34 nonsmoking areas; (5) notwithstanding the provisions of section 31-  
35 40q,] area of an establishment with a restaurant, cafe or tavern permit,  
36 in accordance with chapter 545, except in a smoking room; (5) within a  
37 public school building while school is in session or student activities  
38 are being conducted; (6) in any passenger elevator, provided no person  
39 shall be arrested for violating this subsection unless there is posted in  
40 such room or elevator a sign which indicates that smoking is  
41 prohibited by state law; and (7) in any dormitory in any public  
42 institution of higher education. This subsection shall not apply to  
43 correctional facilities, psychiatric facilities, public housing projects as  
44 defined in subsection (b) of section 21a-278a or classrooms where  
45 demonstration smoking is taking place as part of a medical or scientific  
46 experiment or lesson.

47 (c) In each room, elevator, area or building in which smoking is  
48 prohibited by this section, the person in control of the premises shall

49 post or cause to be posted in a conspicuous place signs stating that  
50 smoking is prohibited by state law. Such signs, except in elevators,  
51 [restaurants] establishments with restaurant, cafe or tavern permits  
52 and health care institutions, shall have letters at least four inches high  
53 with the principal strokes of letters not less than one-half inch wide.

54 (d) Any person found guilty of smoking in violation of this section,  
55 failure to post signs as required by this section or the unauthorized  
56 removal of such signs shall have committed an infraction.

57 (e) Nothing in this section shall be construed to require any smoking  
58 [area] room in any building.

59 (f) The provisions of this section shall supersede and preempt the  
60 provisions of any municipal law or ordinance relative to smoking  
61 effective prior to, on or after October 1, 1993.

62 Sec. 2. Section 31-40q of the general statutes is repealed and the  
63 following is substituted in lieu thereof (*Effective October 1, 2003*):

64 (a) As used in this section:

65 (1) "Person" means one or more individuals, partnerships,  
66 associations, corporations, limited liability companies, business trusts,  
67 legal representatives or any organized group of persons.

68 (2) "Employer" means a person engaged in business who has  
69 employees, including the state and any political subdivision thereof.

70 (3) "Employee" means any person engaged in service to an employer  
71 in the business of his employer.

72 (4) "Business facility" means a structurally enclosed location or  
73 portion thereof at which [twenty] ten or more employees perform  
74 services for their employer. The term "business facility" shall not  
75 include correctional facilities, psychiatric facilities, public housing  
76 projects, as defined in subsection (b) of section 21a-278a, or classrooms  
77 where demonstration smoking is taking place as part of a medical or

78 scientific experiment or lesson.

79 (5) "Smoking" means the burning of a lighted cigar, cigarette, pipe  
80 or any other matter or substance which contains tobacco.

81 (6) "Smoking room" means a room that is (A) designated as a room  
82 in which individuals may smoke, (B) completely separated from the  
83 nonsmoking portion of a building by floor to ceiling walls and a door,  
84 (C) ventilated in such a way as to prevent smoke from entering a  
85 nonsmoking area, and (D) not used to conduct the employer's  
86 business.

87 (b) Each employer shall prohibit smoking in any business facility  
88 under said employer's control, except that an employer may designate  
89 a smoking room.

90 [(b)] (c) Each employer who employs less than ten employees in a  
91 structurally enclosed location shall establish one or more work areas,  
92 sufficient to accommodate nonsmokers who request to utilize such an  
93 area, within each [business facility] location under his control, where  
94 smoking is prohibited. The employer shall clearly designate the  
95 existence and boundaries of each nonsmoking area by posting signs  
96 which can be readily seen by employees and visitors. In the areas  
97 within the [business facility] location where smoking is permitted,  
98 existing physical barriers and ventilation systems shall be used to the  
99 extent practicable to minimize the effect of smoking in adjacent  
100 nonsmoking areas. Nothing in this section may be construed to  
101 prohibit an employer from designating an entire [business facility]  
102 location as a nonsmoking area.

103 [(c)] (c) The Labor Commissioner may exempt any employer from the  
104 provisions of this section if he finds that (1) the employer made a good  
105 faith effort to comply with the provisions of this section and (2) any  
106 further requirement to so comply would constitute an unreasonable  
107 financial burden on the employer.]

108 Sec. 3. Section 31-40s of the general statutes is repealed and the

109 following is substituted in lieu thereof (*Effective October 1, 2003*):

110 (a) No employer or agent of any employer shall require, as a  
111 condition of employment, that any employee or prospective employee  
112 refrain from smoking or using tobacco products outside the course of  
113 his employment, or otherwise discriminate against any individual with  
114 respect to compensation, terms, conditions or privileges of  
115 employment for smoking or using tobacco products outside the course  
116 of his employment, provided any nonprofit organization or  
117 corporation whose primary purpose is to discourage use of tobacco  
118 products by the general public shall be exempt from the provisions of  
119 this section.

120 (b) Nothing contained in this section shall be construed to affect (1)  
121 the provisions of [sections 31-40q and 31-40r] section 31-40q, as  
122 amended by this act, (2) municipal hiring practices involving paid  
123 firefighters and paid police officers, and (3) any collective bargaining  
124 agreement between a municipality and paid firefighters or paid police  
125 officers.

126 Sec. 4. (*Effective October 1, 2003*) Section 31-40r of the general statutes  
127 is repealed.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>

**Statement of Legislative Commissioners:**

In subsection (b) of section 1, the closing bracket was moved from in front of "(5)" to after "31-40q," to avoid duplication of new language added as the opening phrase in subsection (b), and in subsection (b) of section 2, the term "business facility" was replaced by "location", since the definition of "business facility" was amended in subsection (a) of section 2.

**PH**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Type</b>	<b>FY 04 \$</b>	<b>FY 05 \$</b>
Judicial Department	GF - Revenue Gain	Less than \$5,000	Less than \$5,000
Division of Criminal Justice	GF - None	None	None
Labor Department	GF - None	None	None
Various State Agencies	GF - None	None	None

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill further restricts smoking in public places and could thereby increase the number of infractions. The penalty for such infraction is \$60 (includes a fine, fee and surcharge). Any revenue increase under the bill is anticipated to be less than \$5,000. The Judicial Department and Division of Criminal Justice could handle any caseload increase under the bill without the need for additional appropriations. In FY 02, there were 136 total offenses, 89 of which were handled through the Centralized Infraction Bureau resulting in about \$6,000 in General Fund revenue (under CGS Section 19a-342). It is expected that any additional workload for state or local officials who pursue enforcement activities would not require additional resources.

The Department of Labor will not incur costs associated with the bill's provision on smoking restrictions in the workplace settings.

The bill limits smoking in state government buildings (excluding correctional and psychiatric facilities) to smoking rooms. Under current law, the State is not required to make any expenditures or structural changes to create a smoking room in state buildings. If the state creates a smoking room in a state government building there will

be significant costs. However, it is anticipated that the state will not make any expenditures or structural changes to create smoking rooms in state buildings.



**OLR Bill Analysis**

sSB 908

***AN ACT CONCERNING SECONDHAND SMOKE IN WORK PLACES*****SUMMARY:**

This bill generally tightens restrictions on smoking in workplaces and public buildings. It bans smoking in workplaces where more than 10 people work; restaurants, cafés, and taverns; state and municipal buildings; and health care institutions, except in designated smoking rooms. And it extends the current ban on smoking in public areas of retail food stores to the entire store. Smoking rooms, under the bill, must be completely separated from nonsmoking areas by floor-to-ceiling walls and a door and ventilated in way that prevents smoke from entering nonsmoking areas. Food and beverages may not be served or distributed in them.

The bill reverses the current scheme of regulating smoking in workplaces and restaurants, which generally permits smoking in these places except in designated nonsmoking areas. Current law requires employers who employ 20 or more workers in a facility to set aside nonsmoking areas if their employees ask for one. It permits smoking in restaurants that seat fewer than 75 people and allows larger restaurants to designate smoking areas under certain conditions. It also restricts smoking in designated areas of government buildings and health care institutions to designated rooms, but these need not be completely separate and ventilated.

EFFECTIVE DATE: October 1, 2003

**SMOKING ROOMS AND SMOKING AREAS**

The bill defines “smoking room” as a designated room where people may smoke and (1) that is completely separated from nonsmoking areas by floor-to-ceiling walls and a door, (2) that is ventilated in a way that prevents smoke from entering nonsmoking areas, and (3) where food and beverages cannot be served or distributed.

Current law allows smoking areas to be designated in restaurants,

public buildings, and health care institutions. These are separate rooms whose purpose is to provide a place for people to smoke while minimizing smoke in other areas of the building. The law does not require the people in charge of the buildings in which they may be located to spend money or make structural changes to create them.

## **SMOKING IN THE WORKPLACE**

The bill prohibits smoking in any structurally enclosed location (which it terms a “business facility”) in which 10 or more employees work, except in a designated smoking room. It excludes from this prohibition correctional and psychiatric facilities, public housing projects, and classrooms where smoking is demonstrated as part of a medical or scientific experiment or lesson.

Current law allows smoking in most workplaces regardless of the number of employees, but it allows employees in business facilities where 20 or more people work to ask their employer to establish nonsmoking areas. The bill reduces the ceiling where this system applies to locations with nine or fewer employees.

The bill repeals the labor commissioner’s authority to exempt an employer from establishing nonsmoking areas at its employees’ request if he finds that (1) the employer made a good faith effort to comply and (2) further compliance efforts would pose an unreasonable financial burden. It also repeals his authorization to adopt regulations governing exemptions.

## **SMOKING IN OTHER LOCATIONS**

### ***Restaurants***

The bill prohibits smoking in any establishment that holds a restaurant, café, or tavern liquor permit, except in a smoking room. Under current law, people may smoke in restaurants (1) that seat fewer than 75 people and (2) in larger restaurants, if they post signs in areas where smoking is permitted and at the entrance indicating that a nonsmoking area is available. Restaurants may prohibit smoking in rooms used for private social functions.

The bill extends to cafés and taverns the current requirement that restaurants and others post signs in all rooms where smoking is

prohibited, but it exempts them from the lettering size requirements for these signs. Restaurants are already exempt. Smoking where prohibited and failure to post a sign are infractions.

### ***Public Buildings and Health Care Institutions***

Current law prohibits smoking in state and local government buildings and in health care institutions (e.g., hospitals, nursing homes, community health care centers, residential care homes), except in smoking areas. The bill limits smoking in such places to smoking rooms. It continues to exempt from these requirements correctional and psychiatric facilities, public housing projects, and classrooms where smoking is demonstrated as part of a medical or scientific experiment or lesson.

## **BACKGROUND**

### ***Related Bill***

SB 578, favorably reported by the Public Health Committee, allows towns to pass ordinances to place greater restrictions on smoking in buildings that are open to the public than is currently permitted under state law, which preempts all local ordinances in this matter.

### ***Infractions***

Infractions are punishable by fines, usually set by Superior Court judges, of between \$35 and \$90, plus an additional fee based on the amount of the fine and a \$20 surcharge. An infraction is not a crime, thus violators do not have criminal records and can pay the fine by mail without making a court appearance.

## **COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 16      Nay 5